

QUEENSLAND GOVERNMENT CALLS FOR SUBMISSIONS TO REVIEW FRAMEWORK FOR LOT ENTITLEMENTS IN BODY CORPORATE SCHEMES

MARCH 3, 2014 | GENERAL

The Queensland Government has called for submissions in regards to its review of the allocation and adjustment of lot entitlements in community titles schemes under the *Body Corporate and Community Management Act 1997* (Qld) (BCCM Act).

Lot entitlements are used to govern voting rights of owners and to allocate expenses and liabilities to each lot owner within a community title scheme. In recent decades, the methods for allocating lot entitlements have undergone significant changes in an attempt to keep up with the growing number and complexity of community titles schemes in Queensland.

Since its inception, the allocation regimes under the BCCM Act have resulted in undesirable consequences for many owners. This was recognised in 2011 when owners were granted the right to apply for adjustment of lot entitlements which had the effect of creating inconsistencies and unfair distribution of costs and levies between neighbours.

The current Queensland regime has been reviewed in Issues Paper 2 of the Queensland Government Property Law Review.

Community titles scheme are currently required to have 2 lot entitlement schedules: the interest schedule (which determines an owner's share of the common property) and the contribution schedule (which determines an owner's share of costs for common areas).

Under the BCCM Act, developers may calculate contribution schedule lot entitlements by reference to either:

1. An equality approach which divides costs equally between owners, or alternatively;
2. A relative approach which takes into account a number of factors (such as market value or the purpose or characteristics of the lots etc).

Despite its intended flexibility, these wide parameters have often resulted in unjustified and controversial allocations between owners. The Issues Paper considers the pros and cons of the

following options available for reform:

| METHOD | PROS | CONS |
|---|--|---|
| <p>Equal allocation</p> <p><i>All lot owners pay the same regardless of the lot size or any other factor.</i></p> | <ul style="list-style-type: none"> ▪ If owners benefit equally, costs should be shared equally. ▪ Can be unfair if some owners are subsidised at the expense of others. | <ul style="list-style-type: none"> ▪ Each lot does not consume equally ▪ Costs should only be shared equal if property is owned equally. |
| <p>Differential allocation</p> <p><i>Lot owners each pay different amounts. This could be based on value or floor space of the lot.</i></p> | <ul style="list-style-type: none"> ▪ Queensland would be aligned with the majority of other Australian jurisdictions. ▪ A “one size fits all” method is inflexible to cater for all developments. ▪ Lot value reflects the ability to pay. | <ul style="list-style-type: none"> ▪ Expenses are often equally utilised by all owners irrespective of the market value of the lot. ▪ A relative approach which takes into account a number of factors is complex and unpredictable; insufficient justice of lot entitlements is likely to give rise to disputes. ▪ Lot value does not necessarily reflect ability to pay. It may be that a small lot purchased for investment purposes is compared with a larger lot purchased for residential purposes and borrowed money. |
| <p>Combined (equal and differential allocation)</p> <p><i>Lot owners pay for some costs equally and some costs differentially.</i></p> | <ul style="list-style-type: none"> ▪ If property is owned equally, it should be shared equally. If it is not owned equally, it should not be shared equally. ▪ Better reflects different benefits received by different lots for different types of expenditure. ▪ Expenses are more easily administered. For example, equal contribution to administrative fund and differential contribution to sinking fund. | <ul style="list-style-type: none"> ▪ All owners benefit from improvements regardless of their ownership. ▪ All expenditure should be allocated on a basis of value as maintenance and improvements benefit more expensive lots as opposed to less expensive lots. ▪ Allocating some costs equally and some differentially could lead to calculation errors. |

The BCCM Act was amended in 2011 to provide owners with the right to apply to the Queensland Civil and Administrative Tribunal (QCAT) for adjustment of lot entitlements.

The Issues Paper questions whether it is necessary to confer upon lot owners the *open* right to apply for an adjustment. It is suggested that the right to review be limited to circumstances where the lot entitlement is manifestly unfair or unreasonable due to exceptional circumstances.

The reform proposals for adjustment of lot entitlements include:

- Enforcing a percentage limit on the financial impact an adjustment order can have on all individual lot owners' contribution schedule lot entitlements;
- Refusing remedy to an applicant who had actual or deemed knowledge of the lot entitlements at the time the lot was purchased;
- Enabling lot owners to agree on alternative methods of allocating expenses by a resolution or by-law;
- Requiring registered interest holders to consent to any adjustment.

The closing date for submissions is 14 March 2014.

For more information, [contact our Property Law team](#).